IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9213 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDAN METAL PRODUCTS PVT LTD

Versus

SUJIT GULATI IAS OR HIS SUCCESSOR IN OFFICE,

Appearance:

MR KIRAN C RAVAL for Petitioner No. 1

Mr.Desai, Assistant GOVERNMENT PLEADER, for Respondent No. 1

RULE SERVED for Respondents No. 2-3,5

MR RD RAVAL for Respondent No. 4

MR SUBRAMANIAM IYER for Respondent No. 6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/10/2001

ORAL JUDGEMENT

The petitioner has prayed for an appropriate writ and direction for quashing and setting aside the order at

Annexure `H' to the petition, by which the permission for closure is refused by an order dated 10th April, 2000.

The petitioner-Institution has first sent an application for closure on 1.2.2000 to the Specified Authority and as per the affidavit-in-reply filed by one Sanjay Prasad, IAS, Commissioner of Labour, the same was received on 2.2.2000. The Specified Authority was required to decide the said application within 60 days, but, since it was found that the application was not as per the Rules, the Authority informed the Management that the application was not in accordance with law and the applicant-Company was informed to rectify the shortcomings in the application. Thereafter, the petitioner-Company gave a fresh application on 19.2.2000 under protest, which was received by the Department on 19.2.2000. The said application was required to be decided within 60 days, i.e. by 19th April, 2000. The Specified Authority passed an order on 10th April, 2000 and, accordingly, the decision was taken within the aforesaid stipulated time, i.e. prior to 19.4.2000.

In the affidavit-in-reply, the Commissioner of Labour has clearly stated that the decision was taken within the stipulated time and, therefore, the decision was in accordance with law. However, it is required to be noted that even though the aforesaid decision was taken by the Specified Authority on 10th April, 2000, the same was communicated on 20th April, 2000. It is required to be noted that the person who was in charge at the relevant time, was required to despatch the registered letter forthwith instead of delaying the things for 10 days and, it seems that for 10 days, the concerned person kept the letter with him instead of despatching the same promptly. However, it seems that, either on account of negligence or by way of deliberate inaction, the said decision was not immediately communicated to the Management.

In the above view of the matter, the Commissioner of Labour is directed to hold appropriate enquiry and to find out who was the erring Officer / Clerk, who has deliberately or negligently failed to communicate the said decision promptly in spite of the fact that the decision was taken within the stipulated time on 10th April, 2001. Mr.Desai has pointed out that the Commissioner of Labour has already instituted enquiry and the same is pending. Mr.Desai has also placed on record Note of the Commissioner of Labour dated 26th April, 2000, wherein even the Commissioner has clearly stated that it is a gross case of negligence and perhaps, it may

be with a mala fide intention. At the request of Mr.Desai, the said Note is kept on record.

This is a serious matter and in view of the provisions of law, a party, applying for closure, may get benefit of such laxity on the part of the erring officer. It is not a case, where the decision was not taken within the stipulated time, but, unfortunately, the same was not communicated within time. It is a fit case in which, therefore, strict action is required to be taken against the erring Officer and even such person should not be entrusted with such work of despatching such important documents so that, in future, such type of laxity may not result.

So far as the present petition is concerned, it is required to be noted that the petitioner-Company has already addressed a letter on 10th May, 2000, which is at Annexure `Q' to the petition. The said application is in the nature of review application and as per the say of Mr.Raval for the petitioner, the same is still pending since the petitioner has not received any communication. Even under the provisions of Section 25-O(5) of the Industrial Disputes Act, the Appropriate Authority is empowered to review its order, granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication. Under these circumstances, since the petitioner has already moved an application, which is pending, the Competent Authority may take appropriate decision on its own merits. Such decision may be taken within a period of one month from today. The Competent Authority may also decide whether the matter is required to be referred to the Tribunal for adjudication. Since the petitioner has already moved the application, as stated above, it is not necessary to entertain this petition at this stage and the only direction which is required to be given is to dispose of the said application within the aforesaid period of one month. It is needless to say that the Authority will consider all issues which are raised by the applicant, including the question about late communication and its effect.

It is clarified that the observations made hereinabove regarding taking decision against erring officer should not be construed as if this Court has taken a decision that there was a late communication which resulted into deemed permission for closure. It is clarified that this Court has not expressed any opinion on the merits of the issue and it is for the Authority to take appropriate decision on the application which is

pending at the instance of the petitioner. It is also for the Authority to consider whether it is a fit case in which earlier order is required to be modified or not. As stated above, this Court has not expressed any opinion on this point.

In view of what is stated above, it will be open for the applicant even to apply for interim order, if it so wishes and it is for the Authority to consider the same in accordance with law.

This petition is accordingly disposed of on the aforesaid terms. Rule is discharged with no order as to costs.

Direct service is permitted.

9th October, 2001 (P.B. Majmudar, J.)

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(apj)